N THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4768 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VASHRAMBHAI M PATEL - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR AR MAJMUDAR for Petitioner(s) :

MR NK MAJMUDAR for Petitioner(s) : 1,
M/S PATEL ADVOCATES for Respondent(s) : 1 - 3.
MR JITENDRA M PATEL for Respondent(s) : 4 - 6.

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CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date : 06/09/2005

ORAL JUDGMENT

1.In this petition under Article 226 of the Constitution of India, the petitioner has prayed for appropriate writ, order and/or directions quashing and setting aside the actions of the respondents in taking away 5 Acres of the land from the land bearing Survey No.764.

2.It appears from the record that the proceedings under the Gujarat Agricultural Lands Ceiling Act (hereinafter referred to as “the Act” for short) came to be initiated against the petitioner. The petitioner was holding in all 40 Acres and 9 Gunths of land inclusive of the land bearing Survey No.867. It was contended on behalf of the petitioner that the petitioner

has already sold 5 Acres and 6 Gunthas of land from the land bearing Survey No.867 Paiki to the respondent Nos.4 to 6 and therefore, the same cannot be considered in the holding of the petitioner and if the same is excluded from the holding of the petitioner, the petitioner is not holding any excess vacant land. Considering the fact that the sale in favour of the respondent Nos.4 to 6 for the land bearing Survey No.867 Paiki, was contrary to Sec.8 of the Act and therefore, the said land was required to be considered in the holding of the petitioner and accodingly, considering the holding of the petitioner 40 Acres and 9 Gunthas land declared as excess surplus land. The petitioner was entitled to retain 36 Acres of land. It also appears from the record that the said order came to be confirmed upto Gujarat Revenue Tribunal and the same has become final. Thereafter, the proceedings were initiated for giving choice as to which land

the petitioner wants to give as excess surplus land and the petitioner gave option for the land bearing Survey No.867 and the Mamlatdar and Agricultural Lands Tribunal (ALT), passed an order to take possession of the land bearing Survey No.867 admeasuring 5 Acres and 9 Gunthas of land. Being aggrieved and dissatisfied with the same, the respondent Nos.4 to 6 challenged the said order submitting that so far as land bearing Survey No.867, admeasuring 5 Acres and 9 Gunthas is concerned, the same is purchased by them from the petitioner and therefore, it is declared as excess vacant land and hence the possession of the excess land should be taken from the other land of the petitioner. Accepting the same, an order came to be passed to take possession of the excess land from the land bearing 764 of the petitioner. Being aggrieved by and dissatisfied with the same, the petitioner has preferred the present petition under Article 227 of the Constitution

of India.

3.Mr.N.K. Majmudar, learned advocate appearing on behalf of the petitioner has vehemently submitted that when all through out the case of the petitioner is that the land bearing Survey No.867 cannot be considered in the holding of the petitioner and when considering the same in the holding of the petitioner, 4 Acres and 9 Gunthas of land is declared as excess surplus land, the possession of the surplus land should be taken from that land as per the choice given by the petitioner and it is also submitted by him that the authorities below have materially erred in considering the land bearing Survey No.867 in the holding of the petitioner and therefore, it is submitted that the respondents authorities cannot take possession of the surplus land from the land bearing Survey No.764 and therefore, it is requested to allow the present petition.

4.Mr.M.R. Mengade, learned AGP has submitted that the Gujarat Revenue Tribunal has rightly rejected the revision application filed by the petitioner by holding that the order declaring 4 Acres and 9 Gunthas of land as surplus land has become final and the petitioner is required to hand over the possession of that area of the land. It is also submitted by him that it was not possible to get the possession of the land bearing Survey No.867 as the same was in possession of the respondent Nos.4 to 6 and therefore, the order is rightly passed to take possession of the excess surplus land from the other land of the petitioner i.e. Survey No.764 and therefore, requested to dismiss the present petition.

5.Heard the learned advocates appearing on behalf of the respective parties.

6.It is required to be noted that while admitting the present petition, this Court (Coram : Mr.M.B. Shh, J.) has passed the following order on 27/3/1990 :-

> “At the time of hearing of this matter, Mr.Majmudar, learned advocate appearing on behalf of the petitioner, submitted that the order passed by the Deputy Collector in Ceiling Appeal No.4/86 (Annexure-D) on the face of it is illegal. Appellants of that appeal would not get any right in the land in view of the provisions of the Gujarat Agricultural Lands Ceiling Act.
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> As against this, it is the contention of ht learned advocate appearing on behalf of the respondent Nos.1 to 3 that the alleged transfer in favour of the respondent Nos.4 to 6 is collusive and void.
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> Hence, rule. However, it would be open to the respondents to take possession of th land bearing S.No.764 admeasuirng 5 acres. Mr.Majumdar, learned advocate appearing on behalf of the petitioner states that the petitioner would hand over the possession o the said land on or before 15-4-1990 to the concerned authority.”

7. Mr.Majmudar, learned advocate appearing on behalf of the petitioner is not in a position to submit the latest position as on today as to whether the possession of the land bearing Survey No.764 admeasuring 5 acres is handed over by the petitioner to the concerned authority and/or the concerned authority has taken over the possession of the said land or not. Be that may, it is required to be noted that the order declaring the 4 Acres and 9 Gunthas of land as surplus has become final and therefore, the petitioner was required to hand over the possession of that much land which is declared as surplus land to the State Government. Inspite of the fact that the land bearing Survey No.867 was sold by the petitioner to the respondent Nos.4 to 6, deliberately the petitioner has given the choice of the said land to the State Government knowing fully well that the same is not in possession of the petitioner and the petitioner is required to

give choice of handing over the possession of that much of the land which is declared surplus to the State Government and only of that land which is in his possession and the petitioner cannot take advantage of the situation that he has sold the land in question to other person, with a view to defeat the provisions of the Act. If the contentions on behalf of the petitioner that the he may be permitted to hand over the possession of the land in question which is already sold by him to other person, is accepted then in that case, it will be amount to give premium to a person who has sold the property – land in question with a view to defeat the provisions of the Act and when he has pocketed the money by selling the land in question. To give a choice to the State Government to take possession of the land which is sold by the petitioner after pocketing money, is nothing but clear dishonesty which cannot be deliberated. The State Government is entitled to

get possession of the surplus land from the land of the petitioner and the declarant is required to hand over the possession of the excess land from the land which is in possession of the petitioner. Under the circumstances, the aforesaid contention of the petitioner and the prayer of the petitioner directing the respondent authorities not to take possession of the surplus land from land bearing Survey No.764, cannot be accepted.

8. For the reasons stated hereinabove, there is no substance in the petition and the same is required to be dismissed and the same is accordingly dismissed. Rule is discharged. Ad-interim relief granted earlier, if any, stands vacated forthwith.

(M.R. SHAH,J.)

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